In the High Court of Punjab & Haryana at Chandigarh

RSA No. 329 of 2004

Date of Order : 17/09/2007

Ram Sarup VS. Mani Ram And Ors

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Mr.Arun Jain, Advocate for the appellant
Mr.V.K.Jain, Senior Advocate with
Mr.Prashant, Advocate for the respondents.

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J U D G M E N T

HEMANT GUPTA, J.

The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby his suit for possession of land measuring 50 kanals was partly decreed.

The plaintiff as son of Het Ram filed the aforesaid suit for possession alleging therein that after the death of his father on 2.6.2001, the plaintiff has become the owner of the suit property and thus, he is entitled to its possession. On the other hand, the defendant No.1 propounded a Will dated 31.5.2001 executed by deceased Het Ram, his brother. It is alleged that on the basis of said Will, mutation No.500 has been sanctioned in his favour on 27.8.2001.

The only issue which arose out of the pleadings of the parties is whether the deceased Het Ram has executed the Will dated 31.5.2001, Exhibit D-1. The said Will has been proved by DW-2 Krishan Lal, attesting witness, who deposed that he is resident of village Nadhori and running a medical hall at Bhuna. The said witness has further deposed that the said

Will was scribed by Ghansham Dass in his presence and in the presence of Gaje Singh Lambardar, the other attesting witness. DW-3 Gaje Singh Lambardar has deposed that the Will was scribed by Ghansham Dass on the instructions of deceased Het Ram. DW-4 is Ghansham Dass, Scribe, who has deposed the execution of the Will is at the instance of deceased Het Ram.

After considering the respective evidence led by the parties, the learned Courts below have returned a finding that the Will dated 31.5.2001, Exhibit D-1 is proved to be executed. It was found that from the photographs of the executant on the Will, the doubts regarding identity of the executant and the testator stand removed. The argument that the attesting witness is not from the same village was found to be incorrect as DW-2 is though resident of village Nadhori, but he is running his shop at Bhuna. It was found that there is no suspicious circumstance which dispel the due execution of the Will. Such finding was affirmed in appeal as well.

Learned counsel for the appellant has vehemently argued that the mere fact that the deceased was residing with his brother for the last 4-5 years prior to his death, is not sufficient to oust the appellant who is none else, but his real son. There is no reason so as to exclude the appellant from inheritance of execution of the Will. It is also pointed out that the Will is purportedly executed on 31.5.2001, whereas, Het Ram died a week later on 7.6.2001, is the close proximity of the execution of the Will as the date of death of the deceased is surrounded by suspicious circumstances which has not been taken into consideration by the learned Courts below.

Having heard learned counsel for the parties, I do not find any illegality or irregularity in the findings recorded by the Courts below. The

pleaded case of the appellant is that his father died on 2.6.2001, but factually the date of death is 7.6.2001. It is, thus, found that the appellant is not even aware of correct date of death of his father. The Will, Exhibit D-1 is a registered document who bears the photographs of the testator. The plaintiff appearing as P-1 has admitted that the photograph on the said Will is that of his father. The execution of the Will is proved by the Scribe DW-4 Ghansham Dass and attesting witnesses Krishan Lal and Gaje Singh Lambardar. Krishan Lal is resident of the same village as that of the deceased Het Ram and Gaje Singh Lambardar. So, there is no manner of doubt in respect of due execution of the Will, Exhibit D-1. It is admitted fact that the plaintiff was residing in Rajasthan and the deceased Het Ram was residing with his brother atleast for last 4-5 years. Since the deceased was being taken care of by his brother, it is natural for him to bequeath the property to such a person who cared for him during his last days. The mere fact that the deceased was died 7 days after execution of the Will is not suspicious circumstance by itself to discard the Will.

In view of the above, I do not find any illegality or irregularity in the findings recorded by the Courts below which may give rise to any substantial question of law for consideration of this Court in second appeal.

The appeal stands dismissed.

17-09-2007 **(HEMANT GUPTA)**
mohinder* **JUDGE